

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WILLIAM KIRKPATRICK, JR,	)	
	)	
Petitioner,	)	No C 08-3676 VRW (PR)
	)	
vs	)	ORDER OF DISMISSAL
	)	
EDMUND G BROWN,	)	
	)	
Respondent(s).	)	
_____	)	

William Kirkpatrick, Jr, a state prisoner at San Quentin State Prison ("SQSP"), has filed a pro se petition for a writ of habeas corpus challenging the conditions of his confinement at SQSP. Among other things, he alleges that "as of late I've been denied access to my family, medical care, and all the rights and privileges I am constitutionally allowed." Doc #1 at 1-2.

Kirkpatrick's challenge to the conditions of his confinement at SQSP is DISMISSED without prejudice to filing a civil rights complaint under 42 USC § 1983. Although the Supreme Court has not addressed whether a challenge to a condition of confinement may be brought under habeas, see Bell v Wolfish, 441

1 US 520, 526 n6 (1979), the Ninth Circuit has held that habeas jurisdiction is  
2 absent, and a § 1983 action proper, where, as here, a successful challenge to a  
3 prison condition will not necessarily shorten the prisoner's sentence. See  
4 Ramirez v Galaza, 334 F3d 850, 859 (9th Cir 2003); see also Badea v Cox, 931  
5 F2d 573, 574 (9th Cir 1991) (civil rights action is proper method of challenging  
6 conditions of confinement); Crawford v Bell, 599 F2d 890, 891-92 & n1 (9th Cir  
7 1979) (affirming dismissal of habeas petition on basis that challenges to terms  
8 and conditions of confinement must be brought in civil rights complaint).

9 Kirkpatrick is advised that he must exhaust California's prison  
10 administrative remedies before filing a civil rights complaint under § 1983. See  
11 42 USC § 1997e(a). His unexhausted claims cannot proceed otherwise. See id.

12 The clerk is instructed to send Kirkpatrick a blank civil rights form  
13 complaint, enter judgment in accordance with this order, terminate all pending  
14 motions as moot, and close the file.

15 SO ORDERED.

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18 VAUGHN R WALKER  
19 United States District Chief Judge  
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